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NATURAL RESOURCES DEFENSE
COUNCIL, et al.,

NO. CIV. S-88-1658 LKK

Plaintiffs,

O R D E R

V.

KIRK C. RODGERS, etc., et al.,

Defendants.

17 During oral argument on August 11, 2005, the Friant
18 defendants suggested that they had a vested and permanent right
19 to a certain supply of water that was not derived solely from
20 the contracts. They further stated that it would be
21 inappropriate for this court to review the beneficial use of the
22 water from Friant Dam because of Water Code § 1126 and because
23 those rights are vested and protectable until either the State
24 Water Resources Control Board or the state courts say
25 differently.

26 || //

1 They derive this argument from Water Code § 1126(c) stating
2 that:

3 It says that determinations of the Water Board -- the
4 Water Board is vested with the authority to make
determinations of competing beneficial uses, just as
5 it did in D935. And that is subject to review --
judicial review, and that's by state courts.

6 And that's as it should be because there is an
7 infusion of policy that overlays this which is not an
appropriate thing for the federal government to be
8 doing on behalf of the state -- for the federal
judiciary to be doing on behalf of the state.

9 It is not clear to the court exactly what the defendants
10 were referring to, but it appears that it may be significant
11 enough that further briefing is required for clarification.

12 Accordingly the court ORDERS as follows:

13 1. Friant defendants are directed to SUBMIT to this court
14 and serve on plaintiffs and all other parties, a brief not to
15 exceed 15 pages by August 30, 2005 explaining what was meant at
16 oral argument. Plaintiffs are granted until September 14, 2005
17 to submit a response not to exceed 25 pages. The Friant
18 defendants are then granted additional 10 pages upon which to
19 reply by no later than September 28, 2005. These page ranges
20 are a maximum not a minimum and the court will not consider any
21 arguments made which do not relate to the above-raised issue.

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1 2. The order submitting the issues argued at oral argument
2 is vacated, and the matter will stand submitted upon Friant
3 defendants' filing of their reply brief, unless the court orders
4 further oral argument.

5 IT IS SO ORDERED.

6 DATED: August 15, 2005.

/s/ Lawrence K. Karlton

LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT